

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CURLEY JAMES BOYKIN, ID # 1774868,	§	
	§	
Petitioner,	§	
	§	Civil Action No. 3:13-CV-4643-D
VS.	§	
	§	
CARRIE HUCKLE BRIDGE, et al.,	§	
	§	
Defendants.	§	

ORDER
AND ORDER OF RE-REFERENCE

On May 27, 2014 the United States Magistrate Judge filed her supplemental findings, conclusions, and recommendation in this case, recommending that all of plaintiff's claims be dismissed as frivolous under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). Plaintiff Curley James Boykin ("Boykin") objects to the supplemental findings, conclusions, and recommendation.

After making an independent review of the pleadings, files, and records in this case, and the findings, conclusions, and recommendation of the magistrate judge, the court concludes that—except as specified below—the findings and conclusions are correct. It is therefore ordered that the findings, conclusions, and recommendation of the magistrate judge are adopted in part.


The court re-refers to the magistrate judge Boykin's retaliation claim. In his amended complaint, Boykin asserts a claim for retaliation, alleging that defendants Michell Phillip ("Phillip") and Rolanda Winfield ("Winfield") retaliated against him for filing grievances regarding the lack of recreation. According to Boykin, Phillip and Winfield moved him to the general population and then disciplined him when he refused to return to general population. The supplemental findings, conclusions, and recommendation acknowledge this claim, but they do not address whether it is subject to dismissal under 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b). "A complaint is subject to

dismissal as frivolous ‘if it lacks an arguable basis in law or fact.’” *Rhine v. City of Mansfield*, 499 Fed. Appx. 334, 335 (5th Cir. 2012) (per curiam) (quoting *Black v. Warren*, 134 F.3d 732, 734 (5th Cir. 1998)). Boykin’s retaliation claim does not appear to be frivolous.

Accordingly, the court adopts the magistrate judge’s May 27, 2014 supplemental findings, conclusions, and recommendation except as to Boykin’s retaliation claim. As for Boykin’s retaliation claim, the court re-refers this case to the magistrate judge to consider whether to recommend dismissal on another basis, or, if dismissal is not warranted, to direct that process be issued to defendants Phillip and Winfield with respect to the retaliation claim.

SO ORDERED.

August 18, 2014.


SIDNEY A. FITZWATER
CHIEF JUDGE